

D.T.E. 00-61

Appeal of Kevin Barnes from a decision of the Director of the Department's Transportation Division denying his application for a school bus driver certificate.

ORDER DISMISSING APPEAL

I. INTRODUCTION

On May 25, 2000, the Director of the Transportation Division of the Department of Telecommunications and Energy (ADirector@) held a hearing concerning the school bus driver permit application of Kevin Barnes (AAppellant@) pursuant to G. L. c. 25, ' 12F. In a letter dated June 23, 2000, the Director informed the Appellant that the Director had denied the application for a school bus drivers permit. Dissatisfied with this result, the Appellant filed an appeal with the Department of Telecommunications and Energy (ADepartment@).

The Department issued a notice February 26, 2001 scheduling the hearing on the appeal for April 4, 2001. Prior to the hearing, counsel for the Director requested a continuance. The Appellant declined to join the motion. The Appellant opposed the continuance and informed the Department that he would not to attend the hearing. The Department requested that the Appellant formally withdraw his appeal in writing, but the Appellant refused.

The Department sent out notice on April 11, 2001 rescheduling the hearing for April 18, 2001. This notice stated that failure to appear at the hearing could lead to a dismissal of the Appellant's petition. Because the Appellant failed to appear at the hearing, the Director requested that the Department dismiss the appeal for a lack of prosecution (Tr. at 4). In support of its request, counsel for the Director stated that he was ready for the hearing on that date, and that due to the Appellant's failure to appear and stated his intention not to pursue the appeal, the Department should dismiss the Director's decision should stand (id.).

The Department also cited the numerous times and methods it tried to contact the Petitioner without success (id.). The Department called directory assistance to confirm the phone number of the Appellant, and learned that the Appellant had disconnected his phone and there was no available listing for the Appellant in the surrounding area. The Department sent via the mail the granted Motion for a Continuance and did not receive a response from the Appellant. The Department sent notice of the rescheduled hearing and notice of the Motion to Dismiss to the Petitioner via regular and certified mail. The Petitioner failed to respond to either document sent by either method. Finally, the Appellant failed to respond to the Department's letter concerning his failure to appear at the hearing.

Accordingly, because the Petitioner failed to attend the scheduled hearing and prosecute his case and failed to contact the Department by the required date as directed by the Department, the Appellant's case is dismissed and the informal determination of the Director is affirmed.

II. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: the appeal of Kevin Barnes be and hereby is DISMISSED, and the prior determination of the Director is affirmed.

By order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeals as to matter of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such a petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such a petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).